

CHARITABLE SOLICITATION FRAUD

4. C 73/7: S. HRG. 103-533

Charitable Solicitation Fraud, S. Hr...

PEARING
BEFORE THE
SUBCOMMITTEE ON CONSUMER
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

MARCH 24, 1994

Printed for the use of the Committee on Commerce, Science, and Transportation



INDEPENDENT OF LEGISLATION

JUL 19 1994

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ATTENDANCE OF SENATOR
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CHARITABLE SOLICITATION FRAUD

THURSDAY, MARCH 24, 1994

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:35 p.m., in room SR-253 of the Russell Senate Office Building, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Claudia A. Simons, staff counsel, and Moses Boyd, senior counsel; and Sherman Joyce, minority professional staff member.

OPENING STATEMENT OF SENATOR BRYAN

Senator BRYAN. Good afternoon, and welcome to today's Consumer Subcommittee hearing on charitable solicitation fraud. Let me, by way of prefacing comments, apologize to the witnesses. The ranking member of the subcommittee, Senator Slade Gorton, from Washington State, was here earlier but had to move on to another meeting.

I would simply call to the attention of our distinguished witnesses that we were in session last night until 3 o'clock in the morning, and the action on the floor is indeed harried. In fact, I am told we may have votes later on during this hearing, but we will make sure that we have everybody's testimony to make this record complete.

As chairman of the Consumer Subcommittee, I have had the opportunity to chair a number of hearings where witnesses have commented that if the ingenuity and resourcefulness of consumer scam artists were only directed to worthwhile goals, we could cure cancer, secure peace in the Middle East, and achieve virtually every societal objective on the agenda. I believe this observation is particularly apt when examining the growing problem of charitable solicitation fraud, often known as telefunding because the solicitation occurs over the telephone.

It is truly disconcerting to learn about the various tactics and the clever tricks that these scam artists employ. One common telefunding scheme borrows tactics more often seen as part of a telemarketing fraud, in which a caller guarantees that the consumer has won one of several valuable prizes or thousands of dollars in cash.

To receive the prize, however, the consumer need only make a small contribution to a worthwhile charity. The catch, however, is that the consumer does not, in fact, receive a valuable prize; the

small contribution is often several thousand dollars or more; and the only people that benefit from that generous contribution are the telefunders themselves.

Let me quote from a passage on a script used by a recent telefunding operation that I think pretty much summarizes the thrust—and I am quoting:

Customer, this is not a contest drawing. You are locked in and are absolutely guaranteed to receive one of the four major premium categories. Our sincere congratulations for your donation to help those folks who truly cannot afford to help themselves.

And that is the end of the pitch. That is obviously a shorthand version, because these things, as our distinguished witnesses will point out, are persistent and go on for an extended period of time—many phone calls being made during the course of a single day to a single prospective contributor.

These schemes are particularly invidious because they play not only to the consumer's desire to win big, but also appeal to the generosity of the average citizen, appealing to his or her human compassion, and taking advantage of the very qualities that we as Americans take great pride in ourselves.

As I have learned more about this growing consumer fraud, I realize it is a complicated issue, and can be approached from several different angles. Because the Consumer Subcommittee has jurisdiction over the Federal Trade Commission, I wrote to the FTC last September to formally request that it investigate this area, and to determine what types of remedies might be appropriate.

I am pleased to report that the FTC has now brought two telefunding cases in the past few months, and I hope there will be others that will follow.

We will have the benefit of hearing from the FTC shortly about its enforcement activities and some of its other plans in the future.

As recently as last October, I chaired a subcommittee hearing on charitable solicitation fraud in Las Vegas. Witnesses representing all sides of the debate shared their insights on the issue and offered suggestions as to how to best address the problem.

I was pleased to learn at that hearing that the telemarketing fraud legislation which I have sponsored, S. 568, while not specifically targeted to telefunding, nonetheless contains several provisions that could prove extremely useful in these types of cases—in particular, the expanded enforcement tools for the FTC to add to its arsenal of consumer fraud weapons. I will ask the FTC in testimony shortly to elaborate on this issue for the benefit of our hearing record. Your comments, Mr. Chairman, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. This hearing continues the committee's examination of charitable solicitation fraud. As we learned at an earlier hearing, the problem of charitable solicitation fraud is growing and may become the consumer nightmare of the 1990's, just as telemarketing fraud permeated the country in the 1980's.

One form of charitable solicitation fraud becoming particularly common is the prize promotion scheme, with a twist. With this scheme, usually implemented over the telephone, the caller informs the potential donor that he or she has won one of several valuable

prizes or thousands of dollars in cash, that the consumer is absolutely guaranteed to receive one of these items, and that all the consumer must do to receive the prize is to make a "small" donation to the caller's charity. Unfortunately, the consumer rarely receives any prize, and the donation, which is often thousands of dollars, likely will benefit only the scam artists themselves, not a legitimate charity. The elderly are frequent targets of these types of schemes because they tend to be particularly susceptible to making large cash donations.

I understand that one of our witnesses this afternoon actually has a tape recording of one of these scam artists at work. I look forward to reviewing the tape as well as the comments from the other witnesses.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you, Mr. Chairman. I look forward to the testimony of all our witnesses today: Mr. Christian White, Acting Director of the FTC's Bureau of Consumer Protection, who will be representing the Commission today to discuss its recent enforcement activities; Mr. Steven Cole, vice president and general counsel of the Council of Better Business Bureaus. And I might say parenthetically that your counterpart in southern Nevada, Mr. Cole, is extremely helpful. We spent a full day with him and some time thereafter visiting various senior groups, and they have played a major role in our southern Nevada community. And Mr. Frank Dowd, whose father was victimized by fraudulent telefundors and defrauded out of thousands of dollars.

I am now going to ask that Senator Gorton's statement be made a part of the record, and that will be the order.

[The prepared statement of Senator Gorton follows:]

PREPARED STATEMENT OF SENATOR GORTON

Mr. Chairman, thank you for scheduling today's hearing on charitable solicitation fraud. I know that this problem has attracted increased attention in your State, and I compliment you on your efforts to address telemarketing fraud and other forms of consumer fraud. I wish to point out, however, that this problem is not limited to Nevada. The State of Washington Attorney General's office has informed the Federal Trade Commission's Seattle office that 15 of my constituents have complained about charitable solicitation fraud. I can only imagine how many Washingtonians actually have been contacted by these scam artists.

Americans are very generous in making contributions to charities. Countless charities are dependent on this benevolence for their continued existence. The survival of these charities is threatened if consumers fear that solicitations are not for charitable purposes, but rather for the financial benefit of unscrupulous scam artists. It is essential that law enforcement agencies take the appropriate steps to ensure that charitable giving is just that, and that it not become simply a scheme for scam artists.

Today's witnesses will provide important testimony about law enforcement efforts to address this problem. I am interested in hearing whether the FTC believes that the fact that the Commission's jurisdiction does not include nonprofit organizations unduly hinders their enforcement efforts in this area. I would note that officials from the FTC's Seattle office initiated the *Gleaners* case, which alleges that 19 defendants engaged in a scheme to defraud would-be donors to charity.

Again, Mr. Chairman, thank you for holding this hearing. I applaud your leadership on this issue.

Senator BRYAN. And let me take this opportunity to invite our witnesses to speak, and once again to apologize for any inconvenience that may have been occasioned by reason of the delay in the hearing.

I think it would be appropriate, first, Mr. White, to hear from you. And I understand that you may have an audio portion which we would like to hear so that people can really get the flavor of how tenacious and unyielding these telefundors can be. Welcome to the hearing, and we will now hear from you. Your prepared testimony, as well as each of the other witnesses' will be made a part of the record of this proceeding. So, why do you not highlight those points, but I am sure we will be interested in hearing the tape.

STATEMENT OF CHRISTIAN WHITE, ACTING DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. WHITE. Mr. Chairman, thank you very much.

I am indeed Christian White, Acting Director of the Bureau of Consumer Protection at the FTC. And I am very pleased to be here this afternoon to represent the Commission, to discuss the topics that you have so carefully outlined—fraudulent or misleading practices in soliciting charitable contributions.

As you know, the prepared statement of the Commission that you have received represents the Commission's views precisely. What I say this afternoon in response to your questions is, of course, my opinion and not necessarily that of the Commission or a Commissioner.

Senator BRYAN. We would not expect that to be in variance with what the Commission's statement is, Mr. White, but we certainly want to call upon your expertise and firsthand observations. So, please.

Mr. WHITE. As you have noted, we brought a piece of tape that does indeed put what I will discuss into sharp relief. But I would like to talk briefly before we get to the tape about the case in which we obtained this tape and what we are doing to deal with fraudulent telefunding, as you so carefully put it.

The Commission recognizes that charitable solicitation is a terribly important aspect of American life, in providing the resources for valuable services to the public. The Commission, therefore, is very careful that its activities not be unduly burdensome for for-profit organizations that raise funds for charities because that might restrict the flow of funds to legitimate charities.

At your hearing, Senator, in Las Vegas last October, there was discussion of the limitations on the Commission's jurisdiction that might come to play here. I will not repeat that discussion. Suffice it to say that there are limitations in Section 5 of the FTC Act, our core statute. The Commission has authority to challenge unfair deceptive practices of entities that are organized to carry on business for a profit, and it does not have jurisdiction over truly not-for-profit organizations.

We also know that there are constitutional considerations that come into play. Your hearing in Las Vegas carefully discussed those, and I will not repeat them. But despite these limitations, we think there is much the Commission can do to prevent and eliminate deceptive telefunding.

Since your October hearings, the Commission has filed now three cases challenging deceptive fundraising. Two of these involve alleged false statements over the telephone made to consumers, solic-

iting contributions to charity. The third challenges solicitations made to small businesses in connection with an antidrug abuse program.

A brief review of the cases and the complaints and their allegations reveal that they describe a typical telemarketing scam with a twist. In these telefunding cases, the callers allegedly entice consumers with promises of extravagant prizes in return for a donation to a real or, in some cases, a purported charity, whereas the typical telemarketing fraud promises the prize as a bonus for purchasing such items as overpriced cosmetics or vacation vouchers with hidden costs and restrictions.

The shift from purely commercial telemarketing scams to telefunding may be the result of the telemarketers' mistaken belief that they have found an enforcement loophole. We hope that the Commission's enforcement cases have sent a clear message that telemarketing scammers cannot evade consumer protection laws simply by changing what they pitch.

I would like to briefly discuss the cases that have recently been brought by the Commission. But I should say the discussion that I will put forth this afternoon is based on the complaints and the allegations that they made. We have not completed these cases. And so the judges have not made findings on these facts. But I believe that the allegations are instructive and the information will be useful in your consideration.

The first case is called NCH, Inc. It was filed on February 14 of this year in Federal Court in Nevada against that corporation and its officers, challenging NCH's prize promotion scheme for soliciting contributions from consumers. NCH, also known as National Clearinghouse, is based in Las Vegas, and the activities described in the Commission's complaint follow the pattern of other prize promotion scams with that charitable twist that we have discussed.

We are not challenging the fact that NCH was soliciting funds for a bona fide charitable organization, Operation Life, a Las Vegas-based not-for-profit that has in the past provided housing and a Thanksgiving Day meal for the homeless, but our complaint charges that NCH misrepresented what Operation Life was all about.

According to the consumer declarations filed with the court, these telefundors apparently represented that Operation Life was engaged in assisting Midwestern flood victims, endangered species, the hungry overseas, for example—whatever charitable activity that seemed to match the consumer's interest. And as you have said, these telemarketers are ingenious and will use the news and whatever other current information they can to gain credibility for their pitches.

We charged that none of those claims about Operation Life's activities outside of Las Vegas was true.

Again, as in other prize promotion cases, you find that the NCH employees were operating through a scripted sales program, offering, we allege, alluring prizes to consumers who made a contribution—either a \$50,000 annuity, \$5,000 in cash, \$3,500 in cash, or a gold rush worth up to \$25,000.

There were other inducements, but, Mr. Chairman, you have stated the essence of the problem very well.

In the *NCH* case, we were successful in obtaining a preliminary injunction against the defendants, barring the deceptive practices alleged in the complaint, freezing the assets of the defendant corporation and its officers, and appointing a receiver to marshal the assets for return to consumers as redress in the event the case was successfully concluded. A stipulated preliminary injunction is still in effect.

Three weeks after filing *NCH*, we filed another action in Federal Court in Nevada against an alleged net of interrelated telefundors, 9 corporations and 10 individuals in an action styled *FTC v. International Charity Consultants, Inc.* The Charity Consultants complaint alleged that some of these defendants misrepresented charitable activities for which they were soliciting and falsely promised valuable prizes to contributing consumers.

Other defendants in the *International Charity* case are alleged to have assisted in promoting this scheme by providing the boiler rooms—that is, the telephone operations, the front line of the telemarketers—with scripts for use in the solicitation, prizes that might be awarded and the so-called sucker lists—people to call.

The complaint alleged that the defendants were engaged in a nationwide fraud, operated from boiler rooms in Nevada, Massachusetts, and Louisiana, each repeating the same misrepresentation. The complaint alleged that many consumers made thousands of dollars in contributions to the purported charities, and also alleged that the defendants would resolicit the same consumers—that is, a consumer who had sent money would be recontacted and asked for additional contributions to the same charity or to another cause.

This practice, known as reloading in the parlance of telemarketers, is designed to further prey on the most trusting and gullible consumers.

The Charity Consultants' telefundors solicited on behalf of at least two entities—one was a Las Vegas, NV, food bank called the Gleaners, that indeed had charitable status under Section 501(c)(3) of the Internal Revenue Code. They solicited also for another organization, AWARE, that had been rejected by the IRS because AWARE was operating as a for-profit organization.

There were no jurisdictional constraints which precluded the Commission from suing AWARE because the corporation's employees were directly engaged, we alleged, in this deceptive fundraising. They are named in the complaint as defendants.

We also charged that the defendants in this case made the same types of misrepresentations about availability and value of prizes as were alleged against *NCH*.

Senator BRYAN. Did the *Gleaners* case, Mr. White, as did the previous case, make assertions about the charitable nature of their activities that went beyond what Gleaners actually was doing, as it did with respect to Operation Life?

Mr. WHITE. Yes, Mr. Chairman. That seems to be the pattern, that there will be exaggeration of the actual endeavors of those charities that are in fact legitimate.

In the *Gleaners* case as well, we obtained similar relief as in *NCH*, a temporary restraining order, and the court appointed a receiver to marshal the assets and froze those assets so that they

might be available for return to consumers in the event we prevail in the case.

Our goal in cases such as *NCH* and *Charity Consultants* is to immediately stop the misrepresentations, and to obtain redress for consumers who donated money to what they thought was a worthwhile cause. The complaints also seek strong permanent injunctive relief to prohibit the types of misrepresentations alleged in these cases and, where the predicate exists, injunctive safeguards that prohibit those who knowingly assisted the defendants so that they cannot further provide the tools of the trade to deceptive telefundors.

We have referred to this approach as going after the roots of the problem and not just the dandelions. As you are well aware, Mr. Chairman, root defendants are charged with aiding and abetting those who actually perpetrate the fraud, and there are root counts, if you will, in this case.

By using this approach, we hope to reach those entities that distance themselves from the deceptive consumer transactions but whose behind-the-scenes participation in a larger scam is essential to its success.

No matter how eloquent I might be—and I have no illusions on that score—what I say about what is happening in these cases cannot possibly be as useful to the committee as the real thing, and we are lucky to have in this case a tape of a solicitation made by a Charity Consultants telefunder.

It was obtained—and I must say, we always want this kind of evidence to prove our cases, and don't always have it available to us. It was obtained because the consumer's answering machine kicked on and picked up the entire call, and so with your indulgence I will play several minutes of this tape.

As you have said, the telefundors are persistent, and the entire tape that I brought with me is 26 minutes long, and it evidences that sort of persistence. I do not think it would be necessary then to play more than several minutes.

Senator BRYAN. And that, Mr. White, is a single phone call. When we were out in Nevada recently, in Las Vegas visiting senior complexes, many of those are among that targeted group you have characterized, and we heard firsthand that some would receive as many as 10 or 11 phone calls a day. They are just unremitting.

Persistent would be a euphemism. They are relentless, and it was incredible—in fact, one senior told us that she actually bought an answering service just so that she could know whether or not it was one of these calls that she was receiving or, indeed, a call that she intended to receive. But please, proceed.

Mr. WHITE. Just to put a point on it, Mr. Chairman, in discussions just the other day with Attorney General Bonnie Campbell of Iowa, she described an Iowan who was moved by a succession of these calls to call 911. That is how hard it can get, and indeed, calling 911 is pretty good advice for consumers if it gets that bad, because local police activity can be very important in dealing with this kind of fraud.

Senator BRYAN. And this is an actual solicitation we are hearing. This is not just a theoretical or reconstruct of some kind, this is the pitch.

Mr. WHITE. That is correct. The transcript of this tape has been entered into the record in the *Charity Consultants* case, and I will do my best with technology to bring it——

Senator BRYAN. And this is the one—well, go ahead.

[A tape recording was played.]

VOICE. First of all, you can relax. I'm not selling anything. I'm calling from the Charity Center, because as a direct result of that entry form, without purchase necessary, you were hand-selected by the Charity Center as one of our grand national winners today. Congratulations to you, Lois.

VOICE. Thank you.

VOICE. You're very welcome. Now, before I get you excited, you did check a little box down here on the entry form, and it says, I have never won or received a major prize, or winning in excess of \$3,000 before, is that correct? You never won the lottery or anything worth over \$3,000, Lois?

VOICE. I have never won anything over \$25.

VOICE. Well, just so you know that we're a charity, we run a fundraising giveaway every year to generate publicity for us, and Lois, you'll never say never again, and since you're already a winner, I want you to have a pen and a piece of paper ready when I give you the details.

VOICE. OK. Just one second.

VOICE. Take your time, Lois.

Mr. WHITE. There is a bit of a pause here while the consumer goes to get the pen and pencil.

Senator BRYAN. You can tell she is excited.

Mr. WHITE. Yes. There is about 10 more seconds of pause here.

VOICE. All right.

VOICE. OK. Now, Lois, I work for a charity. Now, the name of the charity is called, AWARE, A-W-A-R-E. Now, I'm calling from the AWARE Charity Center.

VOICE. OK.

VOICE. And every year due to tremendous corporate sponsorship we give away some of the biggest premiums nationally. Now, I am the national director. That is my position here at the Charity Center, and my name is Scott Harper, H-a-r-p-e-r.

VOICE. OK.

VOICE. Now, you spoke with my secretary, Sabrina, a little bit ago, and she said to make sure I got in touch with you—you were kind of excited—and Lois, the reason for the call is you were selected, and now, by law, you must receive one of our top five premiums.

Now, No. 1 is your choice this year, since "it is the customer," or "the donor's always right," or "the recipient," like yourself, and Lois, No. 1 is your choice, either a brand new Mercedes-Benz, fully loaded—now, that's a brand-new car, Lois, a Mercedes-Benz. Have you seen what those look like?

VOICE. Yes. Well, not a brand-new one this year.

VOICE. This one comes from Mercedes-Benz, but I will let you know it is a 1993. It is a brand-new one, though, OK.

Now, since some folks wouldn't be able to afford the insurance or the registration fees, I want to let you know if you don't drive the Mercedes-Benz home from your local authorized Mercedes-Benz dealership you can take the cash instead, and this year it's \$50,000, Lois.

VOICE. Oh, my goodness.

VOICE. Now, I have to let you know, in my 12 years as the national director, this was the first year Mercedes-Benz has given us the cash option on that, but I do want to let you know, if you get the top award, it's your choice. If you don't want the car, you take the cash, Lois. It's \$50,000, and you get it all at once. How does that sound for starters?

VOICE. Well, it sounds like something that would save my life right now.

VOICE. Well, my gosh, what would you do with the \$50,000 for Christmas if you got it?

VOICE. For Christmas?

VOICE. Well, you see, all of the awards go out in a few weeks, so what would you do with it for Christmas?

VOICE. Well, I'm afraid I wouldn't do anything with it for Christmas. I would put it down on my living quarters so I could get my mortgage paid off and get my payments down where I can afford to keep my home.

VOICE. Well, that's OK. Now, is that a condominium out there?

VOICE. Yes, it is.

VOICE. Great. Well, we just got my mom one in southern Nevada. Now, I'm calling from the Massachusetts Award Center. So Lois, so your paperwork matches mine and so we can get the award out there in record time, whatever one it is, I want you to circle the \$50,000.

Now, I have to circle it here, so what you're saying is, if you get category No. 1, you would need the cash; right?

VOICE. Right.

VOICE. Well, you deserve it, hon, and that would help you with the condo. I would feel so good inside. Now, that's the best you can do.

Category No. 2, though, Lois, is cash also. Now, this one is \$7,500. Now, that's No. 2. It's \$7,500 in cash, and I want to let you know, here at AWARE, when we give away the cash premium, for your protection we usually send them through a bank-to-bank wire transfer from our bank to yours.

Now, Lois, because of possible redemption charges in the State of California today, it's preferable, if you get the cash, that you have an active checking account or savings account with at least an active balance of \$2,000.

Now, I'm not sure if you do, but if you do, which one applies to you? Is it the checking or the savings with the \$2,000 active balance?

VOICE. Well, actually—well, the savings has * * * No—actually, it's neither one of them. The * * * I have money in the money market.

VOICE. OK, that's smarter, anyway, then. So, in a money market, then, and between the checking account that you probably have, you do have at least \$2,000 active in there; right?

VOICE. In my checking account?

VOICE. Well, either that or in a money market.

VOICE. Well, in the money market, yes.

VOICE. Well, that's fine with me, Lois, and I'm going to validate this with a star, OK. Now, that's just because they like to give the awards out within 24 hours of when they announce which one is yours. That way, there's no delay in getting everything out there to you.

Now, category No. 3, this year, Lois, comes from Dodge. Now, since AWARE has been helping Dodge, they're helping us this year, and it's a brand-new car. Now, this one is a 1994 Dodge Colt, C-o-l-t.

VOICE. I know, I used to have a Dodge Colt.

VOICE. You used to have one? Well, you know how much the new ones cost, right? Now, for you, since money would probably be better, I want you to know, you can choose the brand-new car, or if you have one that's running good, they've been known to authorize the sticker price in cash instead, but that's only if you get No. 3, if you need the cash more, OK. Now, that's a brand-new car, Lois.

Now, category No. 4 is our gold rush, r-u-s-h. Now, we call it the gold rush because it has everything from genuine 14 carat gold and genuine diamonds investment pieces to \$25,000 in United States savings bonds. Now, if you get the bonds, they are the gold certificate series EE savings bonds worth \$25,000. Now, that category isn't cash, though, it's the savings bonds and the investment piece, OK. Now, that's why we call it the gold rush, Lois.

And the last award category is our No. 5. Now, No. 5 isn't a gold rush or \$50,000 in cash, but No. 5 is \$3,500 in cash, Lois, and that's it. The smallest cash award.

Now, keeping in mind that all the awards have to go out, and keeping in mind that this is for charity—if all you came out with by about Christmastime, Lois, was \$3,500, would you feel let down or disappointed at all?

VOICE. No. I would feel good.

VOICE. Well, you certainly sound like a good woman, and we wanted to make sure we picked the right person for this premium. You see, sometimes with \$50,000 and \$7,500 going out, if all someone got was \$3,500 they might be a poor sport and cry "uncle," or something like that, and we didn't want that to happen, since this is for charity, OK.

Now, Lois, you're officially now guaranteed and authorized by law, and in writing you must receive one of those awards all the way up to category No. 1, the \$50,000 in cash.

Mr. WHITE. Mr. Chairman, I would be happy to go on, but I think you have the flavor.

Senator BRYAN. I do, and I guess their pitch is that they have to write a check out in order to receive that. Why do you not just, in the interests of time, flesh out a little of the detail on that for

us. That's a solicitation. I have to tell you that is an absolutely shameless performance. I mean, it is vicious, it is exploitive, it is unbelievable. That poor lady is just—she is hooked. They are reeling her in.

Mr. WHITE. She seems very excited about this.

There are later on in the pitch discussions about the Charity Center, referring to its feeding centers in over 190 cities in America helps us to put children, senior citizens, and women who through no fault of their own are hungry back into their places to live, we are registered with the Internal Revenue Services as a 501(c)(3), officially guaranteed to receive your prize.

The consumer says later on in the discussion of what level of contribution would be appropriate, I think I probably qualify for your charity more than I would for your prizes, but there is a long discussion of the various levels of contribution, the least of which is \$1,100.

There is a discussion about how the national director, as the pitch says, could possibly get her a senior citizen discount on that down to only \$880, and then there is the request for the check, and the offer or the suggestion that it be arranged that the check be picked up by a private courier.

Senator BRYAN. Mr. White, why do we not get you to fast forward a little bit. Did she in fact make a check out to the solicitor, and if so, how did you all become aware of it, if you could just give us that.

Mr. WHITE. The good news in this case is that this individual did not write the check. She continued to harbor concerns and doubts about the Charity Center, and the good news is that she was not successfully scammed, although there were many others who were.

I think you saw the basic approach here—the ranking of prizes, the implication at least, if not the clear statement, that the smallest prize that could be awarded would be \$3,500, the reference to the gold rush being a series of prizes, including gold, that were worth in the neighborhood of \$25,000.

I am holding up, Mr. Chairman—and I will understand if you say you cannot see it—what another consumer who did pay \$1,100 received as the “gold rush.” It is a very small piece of jewelry which, upon appraisal, is of very modest value. It does have industrial quality diamonds in it, and it has some other gems and some gold, but it is probably not worth more than \$150.

Senator BRYAN. Mr. White, I have a copy of the transcript of that conversation. Is that something we can make part of the record? Does that in any way compromise your ability to proceed?

Mr. WHITE. That transcript is a part of the record of the case, and so it is fully public.

[The beginning of the transcript referred to may be found on page 7 and its continuation follows:]

VOICE. I can't believe it.

VOICE. Congratulations, today.

VOICE. Well, I—I still can't believe it.

VOICE. It's OK. In fact, 85-95 percent of all of our winners, when we notify them on the first call, really can't believe it. Can I ask a question of you?

VOICE. Sure.

VOICE. By any chance are you over 35 years old?

VOICE. Yes.

VOICE. OK. I know it's not polite to ask a woman her age, but let's say you were forty, Lois. If you had waited 40 years, or at least 20 years as an adult, and never won anything before, of course the first time you're going to be a little skeptical. Right?

VOICE. Right.

VOICE. That's why we called you first. Now, you put down near your phone number—because all winners are notified by phone—and I want you to put down on your paperwork "in approximately 30 days"—

VOICE. Um, hmm.

VOICE. And just put "received awards" A-W-A-R-D-S and then "call for notification."

VOICE. Um, hmm.

VOICE. Because within about 30 days or less, we'll be calling to notify you of which one is yours and we will pay for the shipping, handling, insurance and redemption charges. So, truly the award comes out for free, Lois.

VOICE. Ah, that's—

VOICE. Now, I want you to know I am the national director. That is my position. That's the only reason I've been authorized to make the call to you myself. Now, I'm calling from the AWARE Charity Center. The name of the charity is AWARE.

VOICE. Um, hmm.

VOICE. And AWARE has asked me to let you know something about them, OK?

VOICE. OK.

VOICE. Now, since they're going to be giving the big award to you, you should know that AWARE—through The Charity Center and through our feeding centers in over 190 cities in America—AWARE helps to put children, senior citizens and women, who through no fault of their own are either homeless or hungry, back into places to live. It is the goal of AWARE to put an end to hunger and the homeless problem in America. Now, since we're registered with the Internal Revenue Service as a 501-C-3, a non-profit organization and recognized as such, every year through tremendous corporate sponsors, Fortune 500 companies and small businesses, we've received some really nice gifts. Now, this year the gifts include: a brand new Mercedes Benz; the cash option—\$7,500 in cash; a brand new car directly from Dodge; the Gold Rush with the savings bonds; and \$3,500. And this year, because you signed up and sent in the entry form, you're officially guaranteed one of those. In fact, because of the magnitude of what's happened, Lois, I want to let you know, since this is already happened for you, we do ask two things of you. But I'm certainly sure both of them are going to make you feel really good about winning. Now, first of all, Lois, after you receive the award, whether it's the brand new car, a cashier's check, savings bonds, or whatever you get, we'd like to see a picture of you smiling for us after you receive the award.

VOICE. No problem.

VOICE. Now, you have to get the award first.

VOICE. Um, hmm.

VOICE. And we do ask for the photograph whether it's a Polaroid, a snapshot, or just of an older picture of you because people want to see real people—

VOICE. Um, hmm.

VOICE. Get nice things like the cash. OK?

VOICE. Um, hmm.

VOICE. Now, secondly, with our program here in aiding and assisting homeless and needy Americans, we also ask for a small donation which is tax deductible. And which will allow us to show that, because you care about fellow Americans in need, you got the big award and that will ultimately increase our donations nation-wide from corporations and from individuals like yourself. Now this year, because you have acted in good faith, Lois, the AWARE Charity Center has set three levels for donations and you get to choose the one that's best for you. Now, if you own your own business you can make the gold level which is the maximum level donation through either your corporate or your personal account. Now, Lois, do you own your own business?

VOICE. No. In fact is I—had to—I'm a widow and—

VOICE. It is just you out there?

VOICE. Hmm?

VOICE. It is just you out there then?

VOICE. There's just me and about, well, it'll be last March, well, because of a health-problem I wasn't able to work anymore and so I'm just hanging on by the skin of my teeth wondering where my next—where—what's it going to come from when I get done with my—the disability—the—

VOICE. Oh, my gosh. Lois? You know what? You know what?

VOICE. Insurance.

VOICE. I—I think—You know what?

VOICE. I think I probably qualify for your charity more than I would your prizes.

VOICE. Well, then—then I can't wait to do this for you. Now we did take your financial position into consideration the best we could. We found out you weren't a millionaire. In fact, if I thought for one minute though that you were a millionaire out there in a, well, shucks, we wouldn't give you the award because if you're a millionaire even the \$50,000 wouldn't mean too much to you would it?

VOICE. No.

VOICE. But since you're not and since I'm sure it'd make a huge difference in your life I just want you to write down the gold level donation. Now, that's at \$3,300, but that's only for folks that own their own business. OK?

VOICE. Um, hmm.

VOICE. Now we have smaller donation levels. You'll probably have to go with the smallest one. But in the middle we have the silver level donation. Now, all of these donation levels include a lifetime membership into the silver, the gold, or the bronze club. But just so you know the silver level donation has been the average donation for this give-a-way over the last twelve years. Now the average donation level for the silver club is at \$2,200 even.

VOICE. Um, hmm.

VOICE. Now write that down. And those two are designed for folks that are still working. Now, for you Lois, since you've agreed to listen to me and hear me out here, I want to let you know I'm personally going to take good care of you and if you have to we have the bronze level donation and the bronze level donation, Lois, is at just \$1,100 even and not a penny more even if you get the \$50,000 in cash.

VOICE. Um, hmm.

VOICE. Now, I want you to write down "bronze" and then "\$1,100." That's one-thousand-one-hundred-dollars. That's tax deductible. But if you happen to get the \$50,000 in cash this New Years then you might just owe me a ride around town, a meal at the finest restaurant in Imperial, and a pat on my back because I'm personally going to deliver it to you.

VOICE. Oh.

VOICE. Does that sound fair enough if you get that one?

VOICE. Yes, that sounds fair enough.

VOICE. Great. Well, we can't wait to do this for you. Now, I want to let you know that in approximately five business days or less you're going to be receiving a receipt from the Internal Revenue Service for the donation. You'll be receiving legal ownership in writing for one of those five awards and it will say right there and then that you must receive one of those and nothing less. Now, Lois, since I've gone this far with you, and since I'm so happy and excited for you, I want to let you know you can relax and put your mind at ease because there's no risk here at all. But because you wrote down the three donation levels I want you to look down at those: the gold level being at \$3,300; the silver level which is at just \$2,200; and then the bronze donation which is the minimum donation at \$1,100. And I want you to dig down deep and let me know out of those which ever would be the most you could handle.

VOICE. Well, right at the present time, the bronze ought to be the most I could handle but it would depend on the award I won.

VOICE. OK. Well, that's a great choice. Now, I can explain everything to you, OK? Now, I do want you to circle the \$1,100 and then the bronze level donation and in return you will receive up to 100 percent tax deduction. Since it's almost tax time, that'll help you get more back on your taxes and give you the credit. But more importantly, Lois, you must, by law, receive nothing less in return than category number five—\$3,500 in cash; the Gold Rush, which is category number four; the brand new car, which is category three from Dodge and that's a Dodge Colt and those are worth over \$12,000. Category number two which is \$7,500. Or category number one, which is the \$50,000 in cash.

VOICE. Um, hmm.

VOICE. Now, you have to promise me. If you need the \$50,000 more and they give you your choice for the Mercedes Benz that you don't take the Mercedes—because if you need the money more—I want to see you get that one, OK?

VOICE. Right.

VOICE. Some folks would fall in love with the Mercedes Benz though if they got it.

VOICE. Well, there's no doubt about that.

VOICE. But you know what? If you want to be practical about things I'm sure the 50,000 would last a lot longer, Lois.

VOICE. Um, hmm.

VOICE. Now, you're officially guaranteed, by law and in writing, one of those premiums and in record time we're going to be delivering it in just a few short weeks.

VOICE. But I do have to ask the question. Now, I'm not obligated to make the donation until after I know which reward and have received the reward, right?

VOICE. Oh. Well, that's the best part. Now, Lois, you're already a winner right now.

VOICE. Um, hmm.

VOICE. Now since we notify all winners by phone—just because they let you know about the awards—you have to receive one. Now, we ask for two things in this year's give-a-way since it's strictly for charity. Number one the photograph. The photo comes after you receive the award.

VOICE. Um, hmm.

VOICE. That's how sure we know you're going to be happy with us. And, secondly, today we ask for a donation. Now, the donation is today just so we can help out some senior citizens and children this Christmas, since Christmas is in a few short weeks. So since the donation is today, Lois, we want you to choose the one that would be the best you'd be comfortable with. Now, some folks would normally go for the gold; some the silver; but, for you, maybe the bronze level donation is the best until you get everything out there. Now, for that donation today, Lois, because we do ask for that, you have your choice. You could make that through a cashier's check, a money order, or just a personal check from your regular account. Which would be the most convenient for you?

VOICE. Oh, gosh. I just—I just don't know if I can come up with that and still have the money that I need to get by with until—if it has to be right now.

VOICE. Well, let me ask you this, Lois. I'm certainly sure if there's a homeless senior citizen or someone who really needed your help out there and they just needed a little extra food or a blanket, I'm certainly sure if they were on your doorstep you wouldn't—you wouldn't turn them away would you?

VOICE. No.

VOICE. If you could help, you would. Right?

VOICE. Right.

VOICE. Well, I believe you and I'm on your side. Now just so you know we can't take food off your table to feed other people because then we'd have to turn right back around and send you a care package and that would—that would defeat the purpose. OK?

VOICE. Right.

VOICE. In fact, since you're a senior—since you're retired, I want to let you know when the award comes out there we're going to need a picture of you smiling for us not one of you shaking your fist at us. OK? Now, I'm going to get you the award. And I want you to relax. Don't even worry about the money yet. I do need to give you our address though. OK?

VOICE. Um, hmm.

VOICE. Now, Lois, I am at The Charity Center.

VOICE. OK.

VOICE. Now, that's The Charity Center. And our address is 6—

VOICE. OK.

VOICE. Tower. T-O-W-E-R.

VOICE. OK.

VOICE. Office. O-F-F-I-C-E. And that's Park. P-A-R-K. 6 Tower Office Park.

VOICE. 6 Tower Office Park. OK.

VOICE. Yes, ma'am. Now that's in Woburn. W-O-B-U-R-N.

VOICE. W-O-U?

VOICE. W-O. B as in "blue."

VOICE. Oh. "B". OK.

VOICE. U-R-N.

VOICE. OK.

VOICE. W-O-B

VOICE. U.

VOICE. U-R-N.

VOICE. Um, hmm.

VOICE. Woburn. Massachusetts. M-A—

VOICE. OK. I've got that.

VOICE. OK. Now, our zip code is 0-1-8-0-1. 0-1—

VOICE. 8.

VOICE. 0-1.

VOICE. OK.

VOICE. Now, Lois, I'm the national director. I want to let you know it's my job to get you registered for the donation. But let me ask you this. If dollars and cents

weren't a problem for you right now. If things weren't so tight would you reach out to help the needy and homeless of America today?

VOICE. Oh, definitely. I do.

VOICE. You would?

VOICE. Um, hmm.

VOICE. Well, I certainly believe you. In fact, I want to let you know, because Sabrina spoke so highly of you, I couldn't wait to get on the phone to give you the good news. Now, I'll go ahead and I'll do something special for you as far as the money goes. Now they have you pre-approved through a personal check. But if I go ahead and I knock a few hundred dollars off of this—if I put in for a super senior discount for you since you're not working anymore—could I ask one favor in return, Lois?

VOICE. OK.

VOICE. Now, since I think you're a nice lady and if I'm reading you right—and I think I am—I know you want to do the right thing. If I could go ahead and put down here that you're retired and get you a super senior discount and save you money the only thing I'd ask of you, Lois, is that as soon as you receive the award out there—if you happen to come up with the \$50,000, would you just give me your word that you'd take care of your bills—maybe even your mortgage first—before you go celebrate?

VOICE. Well, you better believe it.

VOICE. So if I save you money, you'd give me your word now that you'd do the right thing. Right?

VOICE. Right. Um, hmm.

VOICE. Well, I'll take your word. In return I give you my word as the national director with a charity with over 10,000 volunteers across America that I'm personally going to hand walk you through this give-a-way. I'm going to take good care of you and I'm going to put that smile on your face, Lois. You have my word on that.

VOICE. OK.

VOICE. The award's going to be there in about thirty days or less. I get to call you back personally with the good news and today I want you to cross off the \$1,100. Cross that off. I'll go ahead and I'll authorize to let you in for the super senior discount for just \$880 even.

VOICE. \$880.

VOICE. OK. Now, you have to write down next to that "senior" like a senior citizen.

VOICE. Um, hmm. Yeah.

VOICE. I don't believe you're a senior though. You don't sound like it.

VOICE. Oh, yes, I am.

VOICE. Well, when's your birthday?

VOICE. In August.

VOICE. Oh, in August. Well, you're a summer baby then.

VOICE. Right. I'll be 59 in case you're interested.

VOICE. What year?

VOICE. I was born in '34. I'll be 50—I was 59 years old.

VOICE. Oh, OK, so you're just barely a senior? Well, I want to let you know that the senior discount's going to be \$880. Now, that is the lowest minimum donation possible. And if anybody asks you who authorized that you're going to have to say, "the national director did." OK?

VOICE. Um, hmm.

VOICE. So they'll know immediately it's me. Scott Harper.

VOICE. OK.

VOICE. Now, Lois, for that donation today and for a shot at \$50,000 in cash, they do suggest that you make the donation through either a money order or a personal check from your regular checking account. How do you usually pay your bills, Lois?

VOICE. I usually pay them by check.

VOICE. OK. Just by regular check?

VOICE. Um, hmm.

VOICE. Well, fine. Now that's fine with me and, Lois, it's very important now that you grab a clean sheet of paper and your checkbook and I'll give you the final instructions.

VOICE. Oh, OK. Just a second.

VOICE. Take your time, Lois.

VOICE. I need another piece of paper.

VOICE. Yes. Well, I—I'm going to have to give you the instructions, OK?

VOICE. Um, hmm.

VOICE. So take your time, hon.

[PAUSE]

VOICE. OK.

VOICE. OK. Now, Lois, since this is a charity, not only are you going to receive a deduction, but for you helping some people out, you're going to receive back a major premium that could range to several thousands of dollars. Now let me ask you this. If you happen to get the brand new car from Dodge, do you think you're going to need the cash instead for that one, too?

VOICE. I probably would.

VOICE. OK.

VOICE. Um, hmm. I—

VOICE. I will let them—

VOICE. In fact, I'm quite sure because I do have—well, it's an '86 Buick Pontiac. But it's in real good shape.

VOICE. Is it running good?

VOICE. Yes. Um, hmm.

VOICE. OK. And you drive an American car, too.

VOICE. Um, hmm. Well, you better believe it.

VOICE. Well. Me, too. That's just one more plus for you. Now, Lois. Again, we're going to have you send the donation to The Charity Center.

VOICE. Um, hmm.

VOICE. And that's at 6 Tower Office Park in Woburn, Massachusetts. 0-1-8-0-1.

VOICE. Um, hmm.

VOICE. Now on there, under the zip code, I want you to put "Attention: National Director." Since I'm personally going to make sure I take great care of you, Lois, I want to be the first one to see that photograph and, of course, to see that the donation came in. OK?

VOICE. Um, hmm.

VOICE. Now that's our address and, Lois, I want you to write down the toll free phone number we use for all of our donations in California. OK?

VOICE. Um, hmm.

VOICE. Now, the number is 1-8 * * * (end of transcription)

Mr. WHITE. This little item was the "gold rush" they were describing as in the neighborhood of \$25,000. We discussed briefly the practice of reloading, and that is calling up individuals they have successfully obtained money from slightly before the prize is due to arrive and attempting to get another "donation."

Those individuals who responded to a second pitch received a piece of art work. It is four mass-production Norman Rockwell prints in a frame. We asked several art dealers to value it for the purposes of the trial and found that they felt that the prints had a value of about \$5 each, the matting \$5 to \$10, and the framing might be worth as much as \$100, hardly what you would expect from a multithousand dollar contribution.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF CHRISTIAN S. WHITE

Mr. Chairman and members of the Committee: My name is Christian S. White and I am the Acting Director of the Bureau of Consumer Protection of the Federal Trade Commission. I appreciate this opportunity to appear before you today to testify on behalf of the Federal Trade Commission regarding fraudulent or misleading practices in the solicitation of charitable contributions. The views expressed in the prepared statement represent the views of the Commission. My responses to any questions you may have, however, are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

The Commission recognizes the important role played by charitable organizations in providing valuable services. The Commission seeks, therefore, to guard against imposing unduly burdensome restrictions on the conduct of for-profit organizations that raise funds for charities because such restrictions may stifle legitimate charitable activity.¹ The Commission believes, however, that by stanching the increasing

¹According to the Annual Report of the American Association of Fundraising Counsel (AAFCR) Trust for philanthropy, tax-deductible contributions have increased from \$11.83 billion

Continued

flow of fraudulent telefunding, we can help to enhance the public's trust in legitimate charitable fund-raising.

The Commission appeared before this Committee in Las Vegas last October on the solicitation of charitable contributions by telephone, also known as telefunding.² At that time, the Commission noted that limitations in Section 5 of the Federal Trade Commission Act restrict our ability to proceed against some types of entities engaged in unlawful fund-raising practices.³ The Commission has the statutory authority to challenge only the unfair or deceptive practices of entities that are organized to carry on business for the profit of their members; the Commission does not have jurisdiction over truly not-for-profit organizations.⁴

In addition to the statutory limits on the Commission's law enforcement authority, there are also constitutional restraints. The Supreme Court has ruled that fund-raising for charities is fully protected speech under the First Amendment. In *Riley v. National Federation of the Blind of North Carolina*,⁵ the Court struck down a state statute that required a charity to prove the reasonableness of using more than 35 percent of its collected donations for fund-raising expenses.

Notwithstanding these limitations, there is a fair amount that the Commission can do to prevent and eliminate deceptive telefunding. Since October of 1993, the Commission has filed three cases challenging deceptive fund-raising.⁶ Two of the cases involve alleged misrepresentations made through telephone solicitations, and the third matter challenges alleged misrepresentations made to solicit small businesses to place advertisements in what was described as an anti-drug abuse publication.

A brief review of the two telefunding complaints reveals that they describe typical telemarketing scams, but with a twist. In the telefunding cases, the telefunders allegedly entice consumers with the promise of extravagant prizes in return for a donation to a real or purported charity, whereas the run-of-the-mill telemarketing fraud promises a prize as a bonus for purchasing such items as overpriced cosmetics or vacation vouchers with hidden costs and restrictions.

The shift from purely commercial telemarketing scams to telefunding may be the result of telemarketers' mistaken belief that they have found an enforcement loop hole. Nevada law does not require telemarketers to register their businesses with the state if they are soliciting for a charity. Some telemarketers have apparently taken advantage of this registration exception in the belief that their practices would elude detection. We hope that the Commission's enforcement actions have sent a clear message that scammers cannot evade consumer protection laws simply by changing what they deceptively market.

On February 14 of this year, the Commission filed a complaint in the U.S. District Court for the District of Nevada against NCH, Inc., and its corporate officers, challenging NCH's prize promotion scheme for soliciting contributions from consumers.⁷ NCH, also known as National Clearing House, is based in Las Vegas, and the activities described in the Commission's complaint follow the pattern of other prize promotion scams from that area, with the slight variation of soliciting a donation for a charity rather than the purchase of merchandise.⁸

There are several additional distinctive features of the NCH case. First, NCH was soliciting funds for a bona fide charitable organization, Operation Life. Operation Life is a Las Vegas based not-for-profit organization that has been engaged in sev-

in 1962 to \$124.31 billion in 1992. When one accounts for inflation, this represents a doubling in the last 30 years. (Giving USA: The Annual Report on Philanthropy for the Year 1992, 13 [1993]) In addition, a preliminary analysis of the 1990 census showed that approximately 6.2 per cent of the country's workers were paid employees in private, non-profit organizations.

²Charitable Solicitation Fraud: Hearings Before Senate Committee on Commerce, Science, and Transportation, October 11, 1993, (Statement of the Federal Trade Commission).

³Section 5(a)(2) of the FTC Act states: "The commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2).

Section 4 defines "Corporation" to include: "any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members. * * *" 15 U.S.C. § 44.

⁴See *Community Blood Bank of Kansas, Inc. v. FTC*, 405 F.2d 1011 (8th Cir. 1969), construing Section 4 of the FTC Act to bar the Commission from exercising jurisdiction over bona fide non-profit entities.

⁵487 U.S. 781 (1988).

⁶The Commission filed these complaints pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b).

⁷*FTC v. NCH, Inc.*, Civil Action No. CV-S-94-138 LDG (LRL) (D. Nev. filed Feb. 14, 1994).

⁸See *FTC v. Denny Ray Mason*, Civil No. CV-S-93-135-PMP (D. Nev. filed Feb. 22, 1993); *FTC v. Sierra Pacific Marketing*, Civil No. CV-S-93-134-PMP (D. Nev. filed Feb. 22, 1993); and *FTC v. Pioneer Enterprises*, Civil No. CV-S-92-615-LDG-RJJ (D. Nev. filed July 20, 1992).

eral local charitable activities, including housing for the elderly and a Thanksgiving day meal for the homeless. The Commission's complaint charges that NCH misrepresented the charity's activities in its solicitations. The Commission has alleged that NCH employees telephoned consumers and represented that a contribution to Operation Life would assist midwestern flood victims, endangered species, drug addicts, or the hungry overseas. According to the consumer declarations filed with the court, these telefundors represented that Operation Life was engaged in whatever charitable activity seemed to catch the consumer's interest. The complaint alleges that Operation Life was not involved in any of those activities.

The NCH practices alleged in the Commission's complaint resembled other "classic" prize promotion telemarketing scams. NCH employees, through their scripted sales program, allegedly offered alluring prizes to consumers who made a contribution. The Commission's complaint charges that NCH represented that contributors to Operation Life would receive either a \$50,000 annuity; \$5,000 in cash; \$3,500 in cash; or a \$25,000 "gold rush." NCH offered other inducements as well, including promises that consumers would receive a specific prize such as a car or an annuity, or that whatever prize the consumer would receive would be worth at least \$3,500, according to the Commission's complaint. The complaint alleged that these representations were false. Consumer affidavits filed with the court demonstrate that consumers received nothing at all, or token gifts such as a pen and pencil set or a box of candy.

The court issued a preliminary injunction against the defendants, prohibiting the deceptive practices, freezing the assets of the defendant corporation and its officers, and appointing a receiver. Commission staff are currently preparing to go to trial in this matter.

Three weeks after filing the NCH matter, the Commission filed another action in Federal District Court in Nevada against an alleged net of interrelated telefundors—nine corporations and ten individuals—in an action styled *FTC v. International Charity Consultants, Inc.*, or *Charity Consultants*.⁹ The complaint alleged that some of these defendants misrepresented the charitable activities for which they were soliciting and falsely promised valuable prizes to contributing consumers. Other defendants are alleged to have assisted in promoting the scheme by providing boilerrooms with scripts for use in the solicitation, prizes, and customer lists.

The complaint alleged that the defendants were engaged in a fraudulent operation of nationwide reach. The defendants allegedly operated from boilerrooms in Nevada, Massachusetts, and Louisiana, each repeating the same misrepresentations to induce consumers to make donations. The complaint alleged that many consumers made thousands of dollars in contributions to the purported charities. The complaint also charged that the defendants would resolicit the same consumers for additional contributions to the same charity or to another cause. This practice, known as "re-loading" in the parlance of telemarketers, is designed to prey on the most trusting and gullible consumers.

The Charity Consultants telefundors solicited on behalf of at least two entities. The first was The Gleaners, a Las Vegas, Nevada food bank that has obtained charitable status under Section 501(c)(3) of the Internal Revenue Code.¹⁰ The other organization, AWARE, had been rejected by the Internal Revenue Service for 501(c)(3) status. Because AWARE was operating as a for-profit organization, there were no jurisdictional constraints which precluded the Commission from suing AWARE. Because AWARE employees were directly engaged in this deceptive fund-raising, the Commission's complaint named that corporation as a defendant.

The FTC complaint against the Charity Consultants defendants alleged that they falsely represented that the organizations were involved in a variety of charitable activities, including drug and alcohol treatment programs; that the donation would go to activities in the consumer's own region; that a substantial amount of the consumer's donation would go directly to the charity; that the donation would be tax deductible; and that major corporations had donated the awards. In fact, the complaint alleged that none of these representations was true. The complaint also charged that the defendants in this case made the same types of misrepresentations about the availability and value of prizes as were alleged against NCH.

The court issued a temporary restraining order against the Charity Consultants defendants the same day the complaint was filed. The order appointed a receiver,

⁹ *FTC v. International Charity Consultants, Inc.*, Civil No. CV-S-94-00195-DWH (LRL) (D. Nev. filed March 1, 1994).

¹⁰ 26 U.S.C. § 501(c)(3). If an organization is approved under 501(c)(3), its related business income is tax-exempt and donors' contributions are tax deductible.

froze the defendants' assets and prohibited the law violations charged in the complaint.

The Commission's goal in cases such as NCH and Charity Consultants is to bring an immediate halt to the unlawful misrepresentations alleged in the complaints, and to obtain redress for consumers who donated money to what they thought was a worthwhile cause. The complaints also seek strong permanent injunctive relief to prohibit the types of misrepresentations alleged in these cases and, where appropriate, injunctive safeguards that will prohibit those who knowingly assisted the defendants from further providing the tools of the trade to deceptive telefundors.

The allegations that certain of the Charity Consultants defendants aided and abetted the boilerrooms in carrying out deceptive telefunding exemplify what has been called the "root" approach to the Commission's enforcement efforts against telemarketing fraud. This approach is based upon the fact that a telemarketing boilerroom—whether it sells travel certificates, water purifiers, bogus investments, or solicits donations for a bogus charity or even for a bona fide charity by means of misrepresentations—cannot function without relying on a support networks. The boilerroom needs suppliers of products and prize inducements, proven deceptive sales pitches, so-called sucker lists, and access to a credit card collection and payment system, or some similar means of obtaining payment for impulse purchases.

Rather than targeting only fraudulent boilerrooms, the Commission attempts to maximize its resources by aiming at the supporting root network. The "root" defendants are charged with aiding and abetting those who directly perpetrate the fraud. Our aiding and abetting counts charge that the roots knowingly provide the principal law violators with substantial assistance in perpetrating the fraud. By using this approach, the Commission has been able to reach those entities that distance themselves from the deceptive consumer transactions but whose behind-the-scenes participation in a larger scam is essential to its success.

The third charity case recently filed by the Commission, *FTC v. Baylis*, combined several important elements.¹¹ The Commission charged Baylis and its officers with deceptively soliciting by telephone advertising for placement in two publications, *Health watch* and *Health watch Prevention Services*, produced by a purported drug and alcohol abuse prevention program. The Commission's complaint charged that these Boise, Idaho defendants solicited small businesses to advertise in these publications by misrepresenting that, among other things, a substantial portion, or 80 percent, of the advertising revenues supported substance abuse programs in the advertiser's community.

The Commission also alleged that the defendants misrepresented that Baylis itself was a not-for-profit entity, and that Baylis' publication with the accompanying advertisements was widely circulated and read. It appears that Baylis collected advertising revenues under the pretext of running a widespread substance abuse program when, according to the Commission's complaint, it did not. The FTC complaint charged that Baylis sent single copies of its publications to certain schools; this was the extent of its "program." According to the complaint, the publications Baylis sent to the schools did not contain the paid-for advertising. A 1992 Dun & Bradstreet report estimated that Baylis had net sales in excess of \$3 million in 1992.

Commission staff worked closely with the office of Nevada Attorney General Frankie Sue Del Pappa and the Federal Bureau of Investigation in the two telefunding cases described above. In the Baylis case, staff coordinated much of their work with the office of Idaho Attorney General Larry Echohawk. Cooperation among federal agencies with civil and criminal jurisdiction, and between federal and state agencies conserves resources by avoiding the duplication of efforts. Staff members of the Commission have developed fruitful and ongoing relationships with offices of state attorneys general, local district attorneys, regional offices of the F.B.I., the Secret Service, the Postal Inspectors and U.S. Attorneys, and our staff works closely with these offices to coordinate and strengthen our collective law enforcement presence. The Commission is hosting nine regional telemarketing fraud conferences that bring together all participants in the telemarketing fraud enforcement community. These conferences have been very successful in strengthening the working relationships among the offices and improving the information sharing that is essential to a coordinated approach.

An important element in our information sharing is the joint NAAG/FTC ("National Association of Attorneys General") Telemarketing Fraud Database. Consumer protection offices in both the private and public sector nationwide contribute information, mostly in the form of consumer complaints, on various consumer fraud issues. Law enforcement offices, from state attorneys general to U.S. Attorneys, can obtain access to this databank to generate case leads and obtain evidence for ongoing

¹¹ *FTC v. Baylis*, Civil No. 94-0017-S-LMB (D. Idaho, filed Jan. 10, 1994).

ing investigations. The database has proven to be a valuable law enforcement resource that is used by numerous governmental enforcement agencies.

Many of the Commission's telemarketing cases also involve conduct that can establish the legal predicate for criminal prosecution. If criminal prosecution appears appropriate, Commission staff works with federal, state, and local officials with criminal jurisdiction.

The combination of criminal and civil prosecution often contains the right deterrent mix of compensatory relief and punishment. For example, the F.T.C. often obtains *ex parte* orders that impose immediate asset freezes and prohibit certain conduct. Civil and criminal work can be combined in a more direct way. For example, two Commission attorneys have been deputized as Special U.S. Attorneys to assist in the criminal prosecution of defendants who were first targeted in a Commission case involving the deceptive sale of business opportunities.¹²

While enforcement and prosecution are important, it is better to prevent the consumer injury in the first place. To that end, consumer education is a significant component of the Commission's efforts against fraudulent telefunding. The Office of Consumer and Business Education in the FTC's Bureau of Consumer Protection has developed several consumer brochures that are designed to help consumers identify and thus avoid deceptive solicitations. The Commission's brochure on charitable giving warns consumers to be wary of heavy-handed or harassing solicitations. The brochure refers consumers to the philanthropic Advisory Service of the Council of Better Business Bureaus, and the National Charities Information Bureau for information on particular charities, thus allowing consumers to research the legitimacy of a charity or solicitor. Another FTC brochure on telemarketing fraud contains additional advice on how to avoid being victimized by fraudulent boilerroom operators.

The Commission has found that each element of this two-pronged approach—aggressive law enforcement coupled with consumer awareness—is necessary to complement the other. Consumer education has made consumers wary of the once-common postcard solicitations promising gifts with no strings attached. The Commission hopes to achieve the same awareness of the problems with deceptive telefunding, and will continue to use its resources to combat fraud in the world of fund-raising.

I would be pleased to answer your questions.

Senator BRYAN. Mr. White, you used a term that I thought was interesting. You referred to a telemarketing scam with a twist. It kind of sounds like a beverage, does it not? It does have an intoxicating allure though, obviously, because these people do generate and raise big money.

Just one question. Can you give us a number? How much money is generated in the course of a year? Do you have any calculation in terms of not just the particular cases that you have shared with us but generally? This is big business.

Mr. WHITE. We certainly think it is big business. The total of telemarketing fraud has been estimated from an amount of \$40 billion. The American Association of Retired Persons has conducted a survey and believes it to be closer to \$100 billion.

Senator BRYAN. We are talking billion with a "b," \$40 to \$100 billion.

Mr. WHITE. I cannot elaborate on those published figures other than to say whichever end of that spectrum you choose it is much too big. And we know that these are scams that are targeted on the elderly who are available by telephone more frequently than younger Americans, and that is just wrong.

Senator BRYAN. Mr. White, we thank you very much from our committee for coming here today and sharing this with us.

Mr. Cole, let us hear from you next. As I indicated, your better business bureau counterpart in Las Vegas, Mr. Bill Henderson, spent a day plus with us carrying the message. And we would be pleased now to hear from you, sir.

¹² See *FTC v. O'Rourke*, Civil No. 93-6511 CIV-Ferguson (S.D. Fla. filed June 6, 1993).

**STATEMENT OF STEVEN J. COLE, SENIOR VICE PRESIDENT
AND GENERAL COUNSEL, COUNCIL OF BETTER BUSINESS
BUREAUS**

Mr. COLE. Thank you, Mr. Chairman. That was a very hard act to follow, but I hope we will be helpful this afternoon.

As you indicated earlier, I am senior vice president and general counsel for the Council of Better Business Bureaus. The council is the national office of the better business bureau system which consists of over 160 local better business bureaus and their branch offices, and 243,000 member businesses across the Nation.

The council is a nonprofit business membership organization and more than 300 leading-edge companies nationwide belong to the council. Through the support of our national members, the council promotes ethical business practices through self-regulation.

Various recent charity scandals have regrettably weakened the public's confidence and trust in the charitable community. Mr. Chairman, you may have seen recent reports of a July 1993 Gallup poll that the council commissioned of 1,000 Americans age 18 and over. The poll showed that over one-half of the respondents felt that charities have been less trustworthy during the past decade.

The committee's primary concerns today, charity fraud, should be seen in this broader context. Outright garden variety deception and cheating poses a problem not only for the victims and not only for law enforcement, but also for the legitimate charity community which stands to lose even further ground in its efforts to earn and retain public respect and confidence if we do not get a better handle on the problem we are discussing today.

Let me back up just a bit, if I may. You have contributed greatly to renewed public attention to charity fraud, Senator. Well, the BBB system has also been fighting this good fight for almost its entire 80-plus years of existence. Indeed, the earliest membership plaques that you could find in a local business that was a member of a better business bureau as much as 60 to 70 years ago said, "All solicitations must be checked with the BBB." It was their way of protecting themselves back then to make sure that the solicitors who were coming into their stores were legitimate.

Overall, soliciting charitable organizations are the subject of more than 180,000 inquiries each year in the better business bureau system, and they rank among the top 15 categories of public inquiry activity nationwide.

Local bureaus develop reports on charities that have been the subject of a significant number of inquiries at the bureau. In addition, the council has a special national program, the philanthropic advisory service, PAS we call it, which develops information on national charities and evaluates them against certain ethical and financial standards, the 22 standards for charitable solicitation. These national charity evaluations are summarized in reports and publications, and distributed to the public and to local better business bureaus.

While many diverse private sector, nonprofit, and governmental organizations are doing their best to address the problem of fraudulent charitable solicitation I take great pride in telling you, Senator, that the only organization that provides to inquirers in virtually every community in the Nation information about the bona

fides of both national and local charitable organizations soliciting their support is the better business bureau system.

Our concerns with charity appeals go above and beyond what Chris and State and local government authorities might define as statutory fraud. Our standards address such issues as public accountability, use of funds, fundraising practices, and governance.

Last week, in order to obtain as current data as possible for this hearing, we conducted a survey of local BBB's to identify the type of charity fundraising appeal that has been the source of the greatest amount of public concern in the past year. The bureaus reported that almost all of the local better business bureau contacts about charities, 99 percent of them, are inquiries as opposed to complaints. This reflects the fact that thankfully at least many donors are cautious and tend to seek out additional facts before giving. This is precisely what we encourage.

Now, we help the callers at the better business bureaus in a number of ways. We reveal information in better business bureau files about past victims who complained to the BBB. We tell callers about Government law enforcement actions that are pending against the solicitor or the charity, and we tell callers about the way the charity or solicitor responded to donor complaints that were presented by the better business bureau.

With respect to national and, in some communities, local soliciting organizations, inquirers of the better business bureau can also learn whether an organization meets our standards such as those calling for at least 50 percent of the charity's income in any year to be spent on programs and activities related to the charity's purpose, and fundraising costs not to exceed 35 percent of contributions received as a result of the fundraising, and standards calling for adequate involved governing bodies, and adequate controls over fundraising methods and activities of the staff, volunteers, and paid solicitors. I will be reading a letter that pertains to this shortly.

We also have standards providing for disclosure in any solicitation that includes the sale of goods or services like a T-shirt or a circus ticket, the portion of the price that will actually benefit the charity.

And in the cases of direct contact appeals, such as a telephone appeal, to identify the relationship of the solicitor to the charity—is it a volunteer? Is it really a policeman or is it a paid solicitor—and the identity of the charity and the programs to be supported.

In addition, bureaus are typically able to tell callers, even in the case of local charities, the proportion of contributions the arrangements allow an outside solicitor to retain, and whether the contributions to an organization are in fact tax deductible.

Callers also help the better business bureaus help others because bureaus are able to discern commonly practiced schemes that are afoot by questioning the callers about the solicitations.

And finally, BBB's regularly cooperate with law enforcement agencies by providing an early warning based on these inquiries of new schemes showing up in the local market. Some of the cases that we have talked about today are examples of that.

As you well know, Mr. Chairman, not all prospective donors take advantage of the information available to them. They get cheated

and after the fact complain, often to a BBB. An analysis of responses from 51 bureaus nationwide shows that 98 percent of these bureaus report that telephone charity appeals is either the first or second most frequently cited area of public complaint about charity fundraising.

Sixty-nine percent of local bureaus reported two primary complaint areas about telephone appeals—the failure of the caller to identify his or her relationship to the charity, whether a paid solicitor, volunteer, or staff member, and excessive pressure in the fundraising call.

The third problem most frequently cited concerns misrepresentations about the charity's program activities, mentioned by one-fourth of our respondents. These range from vague descriptions of the nature of the charity's programs to exaggerations about the amount the charity spends on its programs.

I reviewed many of the donor complaints in BBB published reports sent to me by bureaus responding to our survey. I do not have statistical data on this point, but it is clear that there is mounting concern in the community over the exorbitant amounts retained by outside paid solicitors that therefore do not benefit the charity's programs. And the bureaus are receiving increasing complaints and inquiries regarding prize offers that require substantial donations for alleged eligibility, the very sort of problems that Mr. White has been discussing.

Actual complaint letters received by bureaus provide additional insight. With your permission, I would like to read just a few excerpts from a couple of letters.

Senator BRYAN. Mr. Cole, let me ask you to do this, and I apologize. I am notified we may have a series of votes in just a few moments, and there are going to be five back-to-back votes which means that will take us more than an hour. I would like to get all of the testimony in and leave it open for questions.

With your permission, what I would like to do is ask you just to kind of summarize, and then I want to go to Mr. Dowd. And then if we have time to get those letters, by all means. And I can assure you that those letter excerpts from your prepared testimony are a part of the record.

So, if I could get you maybe just to hit the final couple of points there, and then I want to hear from Mr. Dowd, because I am afraid that buzzer may go off.

Mr. COLE. I appreciate that, and with your permission I am going to go right to the specific question you asked, What could donors do to help themselves?

Senator BRYAN. Exactly, please.

Mr. COLE. And that is what you asked in the invitation. The clearest and surest way to protect themselves is for donors to refrain from agreeing to a contribution solicited by telephone while they are still on the telephone call. It is as simple as that.

Now, there are some specific suggestions that go beyond that. First, ask the telephone solicitor to send written information about the charity's finances and programs. Legitimate charities will do that.

Second, do not give out the credit card number on the phone. Mail a check later on.

Third, do not succumb to pressure to make an immediate gift. Con artists ask for on-the-spot gifts via overnight mail or will send a runner, as we have heard. Legitimate charities welcome your contribution the next day and it does not have to be immediate.

Fourth, be wary of phone appeals that include a sweepstakes offer. Legitimate contests will not require a donation.

And last, and perhaps most important, seek out additional facts by going to outside sources such as the State charity office or the better business bureau. As I noted earlier, BBB's regularly provide information that will help callers separate the legitimate from the scam artists and do so based on reporting of the experiences of victims, information from cooperative Government offices, and evaluations conducted by the PAS.

Mr. Chairman, in light of your time constraints I think I will allow Mr. Dowd to present his testimony.

[The prepared statement of Mr. Cole follows:]

PREPARED STATEMENT OF STEVEN J. COLE

Mr. Chairman and members of the Subcommittee, my name is Steven J. Cole and I am General Counsel and Senior Vice President of the Council of Better Business Bureaus, Inc., the national office of the BBB system. I am pleased to provide comments about the nature and extent of fraudulent activities and other ethical concerns pertaining to charity fund raising.

The Council of Better Business Bureaus (CBBB) is the national office of the Better Business Bureau system, which consists of over 160 local BBBs and branches and 243,000 member businesses across the nation. The Council is a nonprofit business membership organization tax exempt under section 501(c)(6) of the Internal Revenue Code. More than 300 leading edge companies nationwide belong to the Council. Through the support of our national members the Council promotes ethical business practices through self regulation.

Various recent charity scandals have regrettably weakened the public's confidence and trust in the charitable community. You may have seen recent reports of a July 1993 Gallup Poll of 1,000 Americans age 18 and over that was commissioned by the CBBB. The poll showed that over one-half (52 percent) of respondents felt that charities have become less trustworthy during the past decade.

The Committee's primary concerns today, which I will address in some detail, charity fraud, should be seen in this broader context—outright, garden variety deception and cheating poses a problem not only for the victims and for law enforcement, but also for the legitimate charity community that stands to lose even further ground in its effort to earn and retain public respect and confidence if we do not get a better handle on solving the problem.

Let me back up a bit. While you have contributed greatly to renewed public attention to charity fraud, Senator Bryan, the BBB system has also been fighting the good fight on this problem for almost its entire 80 plus years of existence. Indeed, the earliest membership plaques displayed by business members of local BBBs carried the admonition that "all solicitations must be checked with the BBB."

Overall, soliciting charitable organizations are the subject of more than 180,000 inquiries each year in the Better Business Bureau system and rank among the top fifteen (15) categories of public inquiry activity nationwide. Local Better Business Bureaus develop factual reports on local charities that have been the subject of a significant number of inquiries at the Bureau.

In addition, the Council of Better Business Bureaus has a special national program, the Philanthropic Advisory Service or PAS, which develops information on national charities and evaluates them against certain ethical and financial standards—the 22 CBBB Standards for Charitable Solicitations. These national charity evaluations are summarized in reports and publications and distributed to the public and local BBBs.

While many diverse private sector, non-profit and governmental organizations are doing their best to address the problem of fraudulent charitable solicitations, I take great pride in telling the Committee that the only organization that provides to inquirers in virtually every community in the nation, information about the bona fides of both national or local charitable organizations soliciting their support, is the Better Business Bureau system.

BBB concerns with charity appeals go above and beyond what federal, state, or local government authorities might define as statutory :lfraud or misrepresentation. While we would certainly bring the public's attention to government actions that are brought against charities, our voluntary standards also address such issues as the charity's public accountability, use of funds, fund raising practices and governance.

BBB experience shows that the public expects charities to go above and beyond the letter of the law. Donors want to ensure that their contributions are used in accordance with their expectations. The public holds charities to a high standard of ethical behavior.

Charitable fund raising is carried out through a variety of methods including direct mail, telephone fund raising (also known as "telefunding"), door-to-door appeals, coin collection devices, thrift stores, and television and radio announcements.

Last week, in order to obtain as current data as possible for this hearing, the Council conducted a survey of local BBBs to identify what type of charity fund-raising appeal has been the source of the greatest amount of public concern in the past year. The Bureaus reported that almost all of the local BBB contacts about charities (about 99 percent of them) are inquiries as opposed to complaints. This reflects the fact that, thankfully, at least many donors are cautious and tend to seek out additional facts before making a giving decision. This is precisely what we encourage—investigate before you invest, buy or donate.

BBBs help these callers by revealing information in BBB files about past victims who complained to the BBB; about government law enforcement actions pending against the solicitor or the charity; and about the way the charity or solicitor responded to donor complaints presented to them by the BBB. With respect to national, and in some communities local, soliciting organizations, inquirers can also learn, for example, whether an organization meets our standards calling for:

- at least 50 percent of the charity's income in any year to be spent on programs and activities related to the charity's purposes;
- fund raising costs not to exceed 35 percent of contributions received as a result of the fundraising;
- total fundraising and administrative costs not to exceed 50 percent of total income;
- an annual report and financial statements to be available to donors on request;
- an adequate and involved governing body;
- controls over fundraising methods and activities of staff, volunteers and paid solicitors; and
- disclosure in any solicitation that includes the sale of goods or services or admissions (i.e. tee shirts, circus tickets) of the portion of the price that will benefit the charity.
- direct appeals, including telephone appeals, to identify the relationship of the solicitor to the charity, the identity of the charity, and the programs to be supported by contributions.

In addition, through research with state offices, Bureaus are typically able to report to inquirers, even in the case of local charities, the proportion of contributions the arrangement allows an outside solicitor to retain and whether contributions to an organization are, in fact, tax deductible.

Callers also help the BBBs help others, because BBBs are able to discern commonly practiced schemes that are afoot by questioning the callers about the solicitations in question. Finally, BBBs regularly cooperate with law enforcement agencies by providing an early warning based on these inquiries of new schemes showing up in the local market.

As you know well, Mr. Chairman, not all prospective donors take advantage of information available to them, get cheated, and after the fact complain, often to a BBB. An analysis of responses from 51 BBBs nationwide shows that 98 percent of these Bureaus report that telephone charity appeals is either the first or second most frequently cited area of public complaint about charity fund raising. Furthermore, the volume of complaints received about telephone fund raising appears to be increasing, especially in the Midwest and smaller Southeastern markets.

Sixty-nine (69 percent) of local BBBs reported two primary public complaint areas about telephone appeals:

- (1) the failure of the caller to identify his/her relationship to the charity; for example, paid solicitor, volunteer or staff member, and
- (2) excessive pressure in the fund raising call.

The third telefunding problem most frequently cited by BBBs concerns misrepresentations about the charity's program activities, mentioned by about a fourth of our respondents. Those misrepresentations range from vague descriptions of the nature of the charity's program service efforts to exaggerations about the amount the char-

ity spends on its programs, as compared to fund raising and administrative expenses.

I reviewed many of the donor complaints and BBB published reports sent to me by Bureaus responding to our survey. While I do not have statistical data on this point, it is clear that there is mounting concern over the exorbitant amounts retained by outside paid solicitors that, therefore, do not benefit the charities' programs and that Bureaus are receiving increasing complaints and inquiries regarding prize offers that require substantial donations for alleged "eligibility."

These latter schemes appear to have mushroomed as a creative avoidance of tougher Nevada telemarketing regulations that are not applicable to non-profits. They have been used both to support real charities that benefit little from the appeals and where the supposed charity is but a figment of the solicitor's imagination and the prospective donor's trusting belief.

Depending on the nature of the complaint local BBBs will contact the charity or its fund raising company to respond to the complainant(s)' concerns; include a mention of complaint activity within the report on the charity that is made available to inquirers, and/or contact government agencies when appropriate.

Actual complaint letters received by Bureaus provide additional insight into the nature of telefunding problems. They show the vulnerability of many of our citizens, and the fraudulent telemarketers' ingenuity in using the generosity of the public as a deal "closer," in what experts know to be routine sweepstakes frauds; and the crucial need for charity vigilance and controls over outside fundraising activities.

Let me read from a few letters:

One 1993 letter states in part,

"[The organization] keeps calling us on the telephone asking for money. They've called at least a dozen times in the past few weeks even though we told them we are not interested, we don't have any money * * * They are very pushy and I have to hang up on them, but they keep calling back. Is there anything we can do to get this harassment stopped?"

Another 1993 letter written on behalf of a complainant by her sister-in-law states in part,

"[Mrs. L] was asked for a donation of \$3,500 to qualify her to be eligible and guaranteed to win a prize * * * Unfortunately, [Mrs. L] has sent them \$1,750 feeling she was obligated * * * [Mrs. L] is 80 plus years of age * * * her husband [is] in the Retirement Nursing Home at \$3,000 monthly charge, living on a meager allowance for herself with 'meals on wheels' delivered to her. She cannot afford this type of expenditure and has fallen into a pattern of accepting the phone calls and believing what she is told."

Another 1993 complaint letter about a charity telefunding sweepstakes states in part,

"* * * The money that I sent (\$1,999) for the award as stated by [Mr. R], was used as a contribution per say [sic] * * * I cannot afford to make such a contribution, I will be homeless myself and without food or anything to live on if I cannot get my money back. I should not have been taken in by such a thing, but [Mr. R] guaranteed and assured me over and over again that it would be a gain and not a loss * * *

One donor complaint filed with the BBB about a solicitation to benefit a state troopers' association:

"Received call soliciting money for the troopers' association. I told caller that I could not financially support them at this time. The caller said 'well, f-k you then.' The next day I talked to the BBB and was informed of the many complaints about the troopers' association, their tactics and unprofessionalism. BBB suggested that I call the organization, and I did. I was informed that they hired a telemarketing firm to do their soliciting and that they had no control over them. I was also informed that as a group they certainly do not condone the tactics used by the telemarketing firm, but it is out of their hands."

Of course, this letter tells us much more about the dangers of charity subservience to professional solicitors than rude language—responsible charities know they must not lend their names to unprofessional, deceptive and unproductive solicitation procedures, but too many charities appear to be willing to look only to their bottom line.

While it is true that not all telefunders are involved in causing such problems for the public—most are legitimately raising funds on behalf of charitable organizations—BBB experience shows that problem telemarketers are on the rise and are taking advantage of American generosity.

For quite a number of years, telefunding involving police and firefighter organizations have generated the largest volume of telefunding complaints at many local BBBs. Our recent survey showed that about 78 percent of the Bureaus report that

police and firefighter organizations are among those generating the largest volume of complaints.

In part, this may be due to the fact that telefunding has traditionally been used by many police and firefighter organizations as the principal means to raise funds. As a result, there are more opportunities for problems to arise. It should also be noted that not all police and firefighter organizations are tax exempt as charitable organizations under section 501(c)(3) of the Internal Revenue Code—they may be fraternal organizations or labor organizations, for example, but they nonetheless solicit donations that in many cases are not properly deductible by donors.

The frequency of complaint about police and firefighter organizations might also be reflective of the fact that unscrupulous operators are aware of the respect and concern the public has for both these professions and accordingly seeks to take advantage of public sympathy for such causes.

Veterans groups came in second in our survey of complaint activity in the BBB system. I would make an informed guess that it is for much of the same reasons apropos of police and fire organizations—they have a responsive audience in the prospective donor population.

You asked Mr. Chairman, in the invitation to testify for steps donors can take to be better informed when making a contribution. The clearest and surest way to protect themselves is for donors to refrain from agreeing to a contribution solicited by telephone while they are still on the telephone call. It is as simple as that.

Of course, I am not saying that contributions solicited by telephone should never be made. While that would rid the marketplace of fraudulent solicitors if universally followed, such a radical step would result in hurting honest solicitors and in limiting a viable fund raising alternative for many worthwhile causes.

What we do strongly advise, however, is that the public take a number of common sense precautions before agreeing to a donation:

- First, ask the telephone solicitor to send written information about the charity's romances and programs— perhaps an annual report or financial statement. Legitimate charities will be happy to make this available.
- Second, do not give out your credit card number over the phone. It is always safest to mail the charity a check made out to the full official name of the group.
- Third, do not succumb to pressure to make an immediate gift. Con artists will ask donors to make on-the-spot gifts via overnight express mail or offer to send a "runner" to pick up the check. Legitimate charities will welcome your contribution tomorrow, just as much as today.
- Fourth, be wary of any charity phone appeals that include a chance to enter a sweepstakes but require a donation. Legitimate contests won't require a donation.
- Fifth, perhaps most important, seek out additional facts by going to outside sources such as the Better Business Bureau or the state's charity registration office (usually a division of the attorney general's office.) As I noted at the outset of my testimony, BBBs regularly provide information that will help callers separate the legitimate from the scam artists, and do so based on a reporting of the experiences of victims, information learned from cooperative government offices; and, if the charity is national, evaluations conducted by PAS.

Mr. Chairman, as I noted at the beginning of my testimony, the charitable community has been under an accountability siege due to recent scandals and a number of related concerns. However, many charities are taking steps to address accountability through improved board oversight of the charity's executive leadership and more detailed presentations of financial information within charity audit reports.

At this sensitive time for charities, it is even more disheartening to see a pattern of abuse, such as the one that has begun to emerge from some telemarketing appeals. The unscrupulous actions cited earlier are making it all the more difficult for honest and legitimate efforts carried out through telefunding or other means.

We see it as our obligation and responsibility to assist the charitable community by calling for additional actions to be taken against questionable telefunding practices. These problems need to be stopped before they begin to darken the already muddy philanthropic waters tarnished by past scandals.

The July 1993 Gallup Poll mentioned earlier found that three-fourths (74 percent) of Americans believe there needs to be more mandatory regulation to ensure that charities are fulfilling the promises they make to donors. But those who favored more regulation were not necessarily calling for increased government intervention. When asked who was best suited to monitor charities, two-thirds (67 percent) said they felt that an independent, reputable organization was as well suited as the government.

In our view, the best alternative to additional government red tape is increased public education to help alert donors to problems and concerns so they can more easily avoid fraudulent appeals. To a degree, this Senate hearing will help in provid-

ing such attention. And, the Council and the BBB system are regularly engaged in educational efforts—press releases, such as our release last fall warning the public of the type of sweepstakes scam we have heard about today, BBB newsletters, consumer “tips” publications, and, of course, the written and telephone reports on charities available to prospective donors on request.

But, more educational efforts are clearly needed to address the mounting concerns that have been raised in the testimony given today.

I urge the Committee to support significant increases in funding for state, local and federal consumer and donor educational programs, but that will never be enough given competing priorities. I hope the Congress will find ways to encourage the private sector, including the BBBs and charities and the corporate community, to establish partnerships for education with the government. Working together, combining private and public resources, we can all do a better job.

Thank you again for the opportunity to participate this afternoon.

Senator BRYAN. Mr. Cole, I appreciate that and I thank you very much. Those are very, very helpful and constructive suggestions.

I know that you actually have a little sticker that sometimes you can place on the phone, we were out in the community to do that, that before you send anything call this number and it is your better business bureau hotline. That can save a lot of the anguish which Mr. Dowd and his father went through.

Mr. Dowd, I understand your dad was successfully solicited and then, through your good work, ultimately this story had a happy ending. Let me defer to you and have you tell us about this story and how it affected your family.

STATEMENT OF FRANK DOWD

Mr. DOWD. Thank you, Senator Bryan. I am honored to be here.

I can speak to what Mr. White had mentioned earlier. My father was so successfully targeted in the summer and fall of 1993, and as I will summarize here, he was unscrupulously targeted by the Charity Center and other organizations. He would receive more than 10 telephone calls a day, and sometimes more than 50 pieces of mail a day.

Senator BRYAN. More than 10 calls a day?

Mr. DOWD. More than 10 calls a day, not just from the Charity Center but from these other organizations, such groups as Earth First, The Western Express Company, North American Enterprises, Pony Express, American Health Association, et cetera. I believe my father was put on what you call one of those hit lists.

At the time my father was targeted he was in ill health and my mother, his companion of 46 years, had to go into a nursing home. She has Alzheimer's disease. He was depressed, his judgment was clouded, and he was alone. He was a prime target for this kind of activity.

Indeed, I was home one time in July 1993 when he received such a telephone solicitation. I could not believe that someone actually asked my father to put \$2,200 in a check and have it picked up by a courier. He did not respond that time because I talked him out of it.

My brother and I found that my father was spending thousands of dollars on these contests, with the largest amounts going to the Charity Center. They misrepresented themselves as the Gleaners, posing as the real national organization, the Second National Harvest Food Bank Gleaners, which is a cooperative organization of food banks, and they promised him fabulous prizes.

I have one of these gold rush sweepstakes brochures that my father received. They also sent him statements to the effect that his contributions were in fact tax deductible, which were total fabrications and lies. The checks were picked up by courier and sent to a residential address in Las Vegas, so that the U.S. Postal Service could be avoided.

I began to investigate these organizations. I am a reference librarian, and I like to find out things, I like to investigate things. I began with a piece of paper with the address of the Charity Center and a telephone number on it that my cousin forwarded to me from Michigan. I called up the organization that had sent him a fruit basket in Massachusetts. The connection between Massachusetts and Las Vegas seemed strange.

I received a call from a Mr. Rubbico of the Charity Center, and I asked him to explain his operations. He was unable to summarize what the Charity Center and the Gleaners organizations were all about. He then further misrepresented his organization as being active in 192 cities. I asked him to name 10, which he could not do. When he did name Washington, DC, where I live, I called him on it, and told him he was lying.

I pursued the matter relentlessly for the next several months. After my father allowed his cousin to become his power of attorney, we sought a refund of the money. We interacted with the attorney general's office in Michigan and also in Las Vegas, but it soon proved to be something beyond their reach to effectively deal with. The attorney general's office in Las Vegas was helpful, but they were not able to do much, and the Michigan attorney general's office did not do much either.

I pursued the matter. I demanded to talk to Celeste Tate, who is the founder of the Gleaners organization. I called her up, many times actually, but I could never get through to the numbers I was given by Mr. Rubbico. I demanded to speak to Ms. Tate, and ran up phone bills of several hundred dollars in September and October relentlessly pursuing these people.

I finally did receive a phone call back from Ms. Tate of the Gleaners who informed me that their take from the Charity Center had been increased from 10 to 22 percent. And I said to her that that was absolutely outrageous. How can you in good conscience as a charity spend 90 percent of the money taken in on fundraising alone?

All together, my father was taken for more than \$20,000. Most of that money is gone. The trail has grown cold. I have telephone numbers in Arizona and other States that are no longer operative and the money is just gone.

We were able to recover \$4,900 of this money, however, for which I am very grateful. And I can only say that eventually persistence pays off and that justice is done. And I was just very, very thrilled with the actions that the FTC has taken.

That is my story.

[The prepared statement of Mr. Dowd follows:]

PREPARED STATEMENT OF FRANK B. DOWD

I would like to offer the following testimony to the Senate Commerce Committee Sub-Committee on Consumers for the written record. This is for the Hearing on March 24th, 1994. I will summarize my testimony for my actual appearance.

We have a situation in this country which needs to be stopped. An increasing number of telemarketing firms are posing as legitimate charities and ruthlessly targeting older Americans for contributions. These companies prey on older Americans' good will and their trusting natures. I can speak from personal experience and heartache, and tell the story of my father, Mr. Myron B. Dowd, of 58954 60th Ave, Hartford, MI, 49057, who was so targeted in the summer and fall of 1993. My father is a generous individual, but he is 78 years old, in ill health, and at the time he was coping with the fact that my mother, his wife and constant companion of 46 years, had to go into a nursing home. She is in the final stages of Alzheimer's Disease. My father was understandably depressed and his judgment was clouded. He was an easy mark for several unscrupulous telemarketers and one Las Vegas company in particular, "The Charity Center." This company sought out my father, as well as many other older Americans in Southwestern Michigan, and pursued him aggressively to solicit money. It was not unusual for my father to receive more than ten telephone appeals for money a day from bogus charity organizations, including several from "The Charity Center." Calling on behalf of "The Gleaners," and "Operation Life Community Development Corporation," "The Charity Center" successfully defrauded my father out of \$6,900 for contributions which were never tax deductible, and certainly were not spent as solicited.

"The Charity Center" began repeatedly calling my father in July of 1993 promising prizes such as a \$50,000 annuity, five years of savings bonds, \$25,000 in 14-carat gold coins, or a new Mercedes Benz worth \$50,000, if he would contribute money to the causes they supposedly represented. Chief among these were "The Gleaners," and "Operation Life Community Development Corporation," both located in Las Vegas, NV. He was told that these contributions would feed the homeless and the hungry, that he would win a fabulous prize, and that these contributions were tax deductible. Indeed, he later received written statements thanking him for his "tax deductible" contributions to "The Gleaners." My father kept records of these conversations.

My father's notes show that he was barraged by telephone calls from "The Charity Center" in July and August of 1993 variously by people named Gordon Grotts, Sharon George, and "Bob." I have confirmed this with him. Checks in the amount of \$4,900 from my father to "The Gleaners" were picked up by Federal Express and sent to a residential address in Las Vegas: 2550 S. Duneville. A courier service was used rather than the U.S. Postal Service so that mail fraud charges could not be brought. Altogether, my father spent \$4,900 with "The Charity Center," supposedly on money to "The Gleaners." Needless to say, my father never won any of the prizes promised, only some cookies and some fruit. Various telephone numbers for "The Charity Center" are: (702) 876-5026 and (702) 259-1099. Their address is: 5132 West Charleston, Las Vegas, NV 89102. The address for "The Gleaners" as listed with the Nevada Secretary of State's Office is: 1670 Twain Ave., Las Vegas, NV 89109. The "official" telephone number listed is (702) 687-5105.

My father was also contacted by "The Charity Center" for an organization called "Operation Life Community Development Corporation," at 600 West Owens Avenue, Las Vegas, NV, 89106-2717. Specifically, people named Lisa Johnson and Travis Marshall successfully managed to defraud my father of \$2,000. I have access to the canceled check and I have my father's telephone log of their conversations. Again, my father was under the impression that he was supporting a good cause, he could win a prize, and that his contribution was 100 percent tax-deductible. What a combination!

"The Gleaners" of Las Vegas, a recognized non-profit organization, has had a checkered past. Although touted at the 1984 Republican National Convention as a model food bank charity feeding the homeless and taking no government money, this organization, run by Celeste McKinley (now known as Celeste Tate) and her husband Corey Tate (also known as Darryl Ashford), has been just one step ahead of the law for some time. Newspaper reports of the Las Vegas Review-Journal from August 12-14, 1990, detail a number of abuses. Consistently, "The Gleaners" maintained a cash way of doing business and regularly failed to report their activities to the IRS as they were legally required to do. Reliable records of contributions and expenditures were not kept and mortgage payments for Ms. McKinley/Tate were intertwined with other charity expenses. "The Gleaners" organization did not keep minutes of board meetings. The organization maintained publicly that it took no government funds, but they did in fact employ two VISTA volunteers. "The Gleaners" "tithed" from the organization's income to a store-front church whose pastor was on their Board of Directors. The current president of the organization, Mr. Corey Tate, was extradited to Wichita, Kansas in 1991 for jumping bail. It seems he was charged with setting fire to his mother's home "with her in it." These charges are all documented in the series in the Las Vegas Review-Journal as well



as an article in The Wichita Eagle of July 12, 1991. That story was also picked up by USA Today. Copies of these articles may be obtained from the Las Vegas Public Library by calling (702) 382-5280. The library has been most helpful and without their aid I could not have done my research and found out this information on "The Gleaners."

Sometime in early spring or summer of 1993, "The Gleaners" decided to employ the services of "The Charity Center" to raise funds for their organization. In September of 1993 I became aware of the fact that my father had been aggressively approached by "The Gleaners" through "The Charity Center," and that he had spent thousands of dollars on this organization as well as others. I researched the matter and found out that Mr. John Rubbico was the legally recorded President of "The Charity Center," a for-profit corporation registered in Nevada. I telephoned Mr. Rubbico repeatedly in September seeking information on this organization. In our initial conversation, Mr. Rubbico tried to tell me that "The Gleaners" was actively feeding the hungry in 192 cities. He deliberately misidentified the Las Vegas "Gleaners" with the genuine national food bank organization called "The Second Harvest Gleaners National Food Bank." I asked him to name ten cities of the 192 in which the organization was active, but he was unable to do so. He eventually named Washington, DC, where I live, as one of the cities where they were active, and I called him on it. "The Gleaners" of Las Vegas is not operating in Washington, DC in any way at all.

When I repeatedly telephoned Mr. Rubbico to request basic information on the activities of "The Gleaners," Mr. Rubbico became irritated. He refused to answer my questions and directed me to call their customer service telephone organization and to speak to Mr. Martin Mayer. I could not get through for some days. Mr. Mayer did not return my calls either, so I telephoned Mr. Rubbico daily for approximately ten days. Eventually, Mr. Mayer did finally call to tell me that the money had been passed on to "The Gleaners," and that a refund was not possible.

I found this state of affairs unacceptable and I pursued the matter. I demanded to speak to the "founder" of "The Gleaners," and was referred by Mr. Rubbico to Ms. Celeste Tate in late September, 1993. I called the telephone numbers given me: (702) 731-4747; (702) 734-3663; and (702) 734 FOOD; but these lines were never answered. Only after I had insisted to Mr. Rubbico that I speak to Ms. Tate, and had followed up several times, did Ms. Tate call me back. One cannot call them, one has to wait for a return phone call. Ms. Tate went on to tell me that their organization had been written up in several publications, most notable Newsweek and Megatrends for Women. Ms. Tate told me that recently, their "take" from the telemarketing efforts of "The Charity Center" had been increased from 10 percent to 22 percent. I hit her with the fact that they were defrauding older Americans and that it was unconscionable for a charity organization to spend 78 percent or 90 percent of its contributions on fundraising. She countered with a statement to the effect that she only wished they had more generous donors like my father. Of his \$4,900 sent to The Gleaners, the vast majority went to the coffers of "The Charity Center." Ms. Tate seemed quite content with the arrangement, and not at all perturbed that my father had been successfully defrauded out of a lot of money. In fact, Ms. Tate went on to talk about the "generous" proportion that they receive as a charity from telemarketing efforts. If this is generous, I shudder to think about other fraudulent telemarketing efforts out there.

Through his power of attorney, Bruce Dowd, my father threatened legal action, and appealed to the Nevada Attorney General's Office in Las Vegas repeatedly for action. "The Charity Center," through Ms. Trina Frederico, acting on behalf of "The Gleaners," suggested to my father in a letter dated November 1, 1993, that his family was working against him. Only after repeated letters and threats to "The Gleaners" and Ms. Frederico, was a refund of \$4,900 finally sent to my father. My cousin, Bruce Dowd, and I spent a huge amount of energy and ran up tremendous telephone bills pursuing this matter. "The Charity Center" and "The Gleaners" are extremely difficult to deal with and make obtaining a refund an extremely unpleasant experience.

The other organization that successfully defrauded my father out of \$2,000 is "Operation Life Community Development Corporation." I was never able to determine just what the supposed charity aims of this organization are. They employed the same telemarketing firm, "The Charity Center." The listed telephone number for this organization is (702) 399-1424. This number is never answered. There is a recording, however, which notes that maintenance calls for the "Ruby Duncan Manor" is (702) 399-6084. The people at Ruby Duncan Manor maintain they have no contact with fraudulent charity fund-raising efforts, but after much back and forth conversation I was finally advised that Mr. James (or John) Heart would call me back. His telephone number is (702) 735-5006. Mr. Heart told me that his organization

had engaged "The Charity Center," but they soon dropped them because of their questionable telemarketing practices. He then told me to apply to "National Clearinghouse" at (702) 735-5006 for a refund of the \$2,000 my father had sent in. Through his power of attorney, Mr. Bruce Dowd, (616 621-3760), my father has requested a refund of this money. So far, no refund has been received. When most recently I spoke to Mr. Heart in December of 1993 I was told by him that their assets had been seized by the F.B.I. and that therefore they could not refund the money. My father, through his power of attorney, is still pursuing this matter.

These are not the only telemarketing organizations which preyed on my father in 1993. Altogether, my father spent approximately \$20,000 on organizations such as "Earth First" in Colorado Springs, CO; "Western Express Service Company" in Las Vegas, NV; "American Health Association"; "American Clearinghouse" or "AMC Enterprises" in Tempe, AZ; "Nutntyne" or "North American Enterprises" in Las Vegas, NV; and "Pony Express" of St. Joseph, MO. I believe that something must be done about fraudulent charity telemarketing schemes and that the resources of the Federal Trade Commission, as well as the Federal Bureau of Investigation must be strengthened so that they can cope with these fraudulent organizations. Although my father, through his power of attorney, appealed repeatedly to the Attorneys General of Michigan and Las Vegas, these state government law-enforcement agencies proved to be of little help. They both conducted their own underfunded investigations and were not prepared to deal with fraud on this scale.

Thank you for your consideration of my statement. I would be happy to help out in any way to stop these fraudulent activities which hit hard at older Americans and take advantage of their trusting natures, their willingness to help, and frequently, their depressed economic conditions. My father was such a target. I would like to see other older Americans spared from the predatory approaches of organizations such as "The Gleaners," "Operation Life Community Development Corporation," and "The Charity Center." \$20,000 is too much for one man to spend on organizations such as these.

Senator BRYAN. Thank you very, very much for your testimony. These folks are relentless, and it seems that they met their match in you. You were equally relentless and persistent in the cause of justice, however, and I compliment you on that.

Mr. DOWD. Thank you.

Senator BRYAN. I must say that I have never been privileged, as chairman of this subcommittee, to have heard more compelling and more articulate testimony than I have heard today. I very much appreciate it.

What we are going to do is to hold the record open in this proceeding, and we are going to send any questions from any member of the subcommittee, and if you could respond to those questions and they will relate to your testimony.

I have got just one or two questions before the second bell goes off. Mr. Dowd, you heard Mr. Cole's recommendations when people get a call. You had a father that was particularly vulnerable who had lost a spouse of many, many years, not in the best of health. That is a classic case of somebody who is alone and vulnerable and insecure. Is there anything else you think we ought to be able to do?

Mr. DOWD. Well, I think had my father had the brochures at hand he perhaps would have thought twice. But as you heard in the tape recorded excerpt, these people are relentless. And after they barrage you several times a day for weeks on end your resistance is worn down, particularly in my father's case where he was lonely. He just liked to talk to somebody. Maybe if he had one of those stickers on the phone, I do not know. But it is a pernicious, insidious problem. It must be stopped.

Senator BRYAN. Mr. Cole, you deserve congratulations. Your organization has been helpful, as I said, in southern Nevada and all

across the country. Let me just encourage you throughout your various affiliates to see if you cannot get those public service announcements that television and other broadcast outlets air to get this message across.

We have heard testimony, I have talked with people in my own home town of Las Vegas who have succumbed, and literally we are not just talking \$4,900. Sad to say, people have literally given up most of their financial security for their retirement because these people are not only persistent but, as indicated by the tape we just heard Mr. White play, they are somewhat engaging and pleasant. They have the ability to engage in that banter back and forth. And maybe Mr. Dowd is right, for those who are lonely they are somebody to talk to, and these people have all of that con game down to a fine art.

Well, we are going to have to close our subcommittee hearing today, and let me just once again thank you very much for your attendance. And we are going to work on S. 568 to get that through. I think that gives some additional weapons to the FTC in terms of what we can do legally to assist the State attorneys general perhaps to do more, Mr. Dowd, than they were able to do in your situation.

Mr. DOWD. That would be wonderful.

Senator BRYAN. And we appreciate it very much and thank each of you for your testimony today. This hearing will stand adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

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